

R E M A R K S

In the present Office Action mailed January 4, 2007, claims 1-3, 5-9, 11-14, and 16-23 were pending before the Office. Claims 1, 8, 13, 16, and 19-23 are the only independent claims.

All the pending claims were rejected under 35 U.S.C. §103 as being obvious.

A. OBJECTIONS TO THE SPECIFICATION

The disclosure is objected to due to informalities. The informalities appear to result from an amendment to the specification filed on 11/1/06.

Applicants submit herein an amendment to the specification as originally filed. Applicants submit that this amendment overcomes the objections to the specification. Accordingly, Applicants request withdrawal of the objection.

B. OBJECTION TO CLAIMS FOR THE USE OF 'ADAPTED TO'

The Office Action asserts that claims 1 and 19-23 are objected to for the use of the term "adapted to" as making the claim limitation following the term optional and does not require the steps to be performed.

Applicants respectfully submit that they do not agree with, nor accept the Examiner's assertion that "adapted to," does not introduce a positive limitation. The Examiner is respectfully reminded that MPEP Section 2173.05(g) makes it clear that functional claim language is perfectly acceptable.

In fact, the MPEP includes an example of functional language introduced by the term "adapted to":

In a claim that was directed to a kit of component parts capable of being assembled, the Court held that limitations such as 'members **adapted to** be positioned' . . . serve to precisely define present structural attributes of interrelated component parts of the claimed assembly. *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976)." (emphasis added)

Accordingly, Applicants assert that claim language that recites a feature modified by being "adapted to" do something does not preclude the modification from being a positive recitation of a feature. Accordingly, Applicants decline to amend claims 1 and 19-23 as suggested in the Office Action.

C. OBJECTION TO CLAIM 11 FOR INCORRECT DEPENDENCY

Claim 11 objected to because of the following informalities for being dependent upon canceled claim 10. Applicants have amended claim 11 as suggested by the Examiner.

D. REJECTION UNDER 35 U.S.C. §101

On page 2 of the present Office Action, claims 21-23 are rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. The Office Action asserts that Claims 21-23 are directed to descriptive material per se because the claimed material is not capable of causing functional change in a computer.

Applicants do not understand the basis for the assertion that the claimed material is not capable of causing a functional change in a computer and respectfully request clarification. Further, the Examiner's remark that "the computer program is not executed by a computer" seems to imply that the Examiner is requiring Applicants to claim the use of their invention and not merely the structure of the invention. Clarification on this point is respectfully requested. Nevertheless, without accepting the basis for the rejection, Applicants respectfully traverse this rejection.

Applicants submit that the computer program product recited in claims 21-23 is capable of causing a functional change in a computer. In fact, claim 21 recites the features of a computer program adapted to "enqueue the first flow **to a first scheduling queue associated with the first output port.**" (emphasis added). Claim 22 recites the features of a computer program "**transmitting from a second output port** a data frame associated with the dequeued second flow." (emphasis added). Claim 23 specifically claims a computer program that is adapted, *inter alia*, "**to assign a plurality of output ports** to a first of the one or more scheduling queues." (emphasis added).

Applicants submit that all of the above features in claims 21-23 cause functional changes in a computer. Accordingly, Applicants assert that claims 21-23 are allowable under 35 U.S.C. §101.

E. REJECTION OF CLAIMS UNDER 35 U.S.C. §103(A)

Claims 1-3, 5-9, 13, 14 & 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application No. US2001/0004363 A1 (Usukura) in view of U.S. Patent No. 6,975,638 (Chen et al). Claims 1, 8, 13, 16, and 19-23 are the independent claims.

Applicants have amended the independent claims with additional features such as 'based in part on a relative bandwidth of the output port from which the respective flow is appointed for transmission' or 'a relative bandwidth of one of the output ports is used to assign one of the data flows to one of the scheduling queues' or the like. Applicants respectfully submit that such features are not taught or suggested in relied upon references.

Note that Applicants are not conceding in this application that the original claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of allowable subject matter. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

Applicants respectfully submit that the Office Action incorrectly relies on Applicants' Detailed Description section of the present application as a prior art teaching the above features. That is, on page 9 of the Office Action, the Examiner states that "WF is a weighting factor associated with the respective flow based in part on a **weight scalar WS**

associated with the output port from which the respective flow is appointed for transmission" are disclosed on pages 6-7 in the Background section of the present Application. (emphasis is added). However, Applicants submit that nowhere on pages 6 and 7 (or anywhere in Applicants' Background section) is a weight scalar WS associated with the output port from which the respective flow is appointed for transmission or the like discussed. Accordingly, Applicants do not accept and thus, reject the Office Action's assertion that the Background section of the present Application discloses such features.

In contrast, Applicants submit that such features are actually only disclosed in the Detailed Description section of the present application. Specifically, the present Application teaches that "the weighting factor WF may be based in part on a relative bandwidth accorded to the output port in question." (page 15, lines 13-15). Accordingly, Applicants do not accept the Office Action's assertion that the Background section of the present Application discloses such features. Thus, Applicants assert that the Examiner incorrectly relied upon the present Application as prior art.

Applicants have amended the independent claims 1, 8, 13, 16, and 19-23 with the above discussed features or the like. That is, the independent claims have been amended with additional features such as 'based in part on a relative bandwidth of the output port from which the respective flow is appointed for transmission' or 'a relative bandwidth of one of the output ports is used to assign one of the data flows to one of the scheduling queues' or the like. Applicants

respectfully submit that such features are not taught or suggested in relied upon references. As amended, claim 1 reads as follows:

1. (Currently amended) A data communication apparatus, comprising:
a plurality of output ports; and
a scheduler adapted to assign priorities to outbound data frames associated with data flows, the scheduler including one or more scheduling queues, each scheduling queue adapted to indicate an order in which data flows are to be serviced, at least one scheduling queue having at least two of the output ports assigned to the scheduling queue;
wherein a relative bandwidth of one of the output ports is used to assign one of the data flows to one of the scheduling queues.

As discussed above, the Office Action incorrectly relies upon the Background section of the present Application as teaching such features. Further, Applicants submit that the other relied upon references fail to teach or suggest, or render obvious, such features. Accordingly, Applicants assert the relied upon references do not teach all of the features of the independent claims 1, 8, 13, 16, and 19-23 as amended.

F. CONCLUSION

Since the Applicants assert that all the independent claims as amended are in condition for allowance and all

remaining claims properly depend from the independent claims, Applicants assert that all claims are allowable.

A separate Request for Extension of Time is enclosed herewith, with authorization to charge the requisite extension fee to Deposit Account No. 04-1696. Applicants do not believe any other Request for Extension of Time is required but if it is, please accept this paragraph as a Request for Extension of Time and authorization to charge the requisite extension fee to Deposit Account No. 04-1696. Applicants do not believe any additional fees are due regarding this Amendment. However, if any additional fees are required, please charge Deposit Account No. 04-1696.

Applicants encourage the Examiner to telephone the Applicants' attorney should any issues remain.

Respectfully Submitted,



Dated: June 4, 2007
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